

1 UNITED STATES DISTRICT COURT
2 CENTRAL DISTRICT OF CALIFORNIA - WESTERN DIVISION
3

4 UNITED STATES OF AMERICA,) Case No. LA CR 24-00091-ODW
5 Plaintiff,) Los Angeles, California
6 vs.) Monday, November 25, 2024
7 ALEXANDER SMIRNOV,) (10:07 a.m. to 10:26 a.m.)
8 Defendant.) (10:40 a.m. to 10:46 a.m.)
9

10 TRANSCRIPT OF MIL/STATUS CONFERENCE
11 BEFORE THE HONORABLE OTIS D. WRIGHT II
12 UNITED STATES DISTRICT JUDGE

13 Appearances: See next page.
14 Court Reporter: Recorded; CourtSmart
15 Courtroom Deputy: Sheila English
16 Transcribed by: C. Okonta
17 Echo Reporting, Inc.
18 9711 Cactus Street
19 Suite B
20 Lakeside, CA 92040
21 (858) 453-7590
22
23
24

25 Proceedings recorded by electronic sound recording;
transcript produced by transcription service.

1 APPEARANCES:

2 For the Plaintiff:

CHRISTOPHER M. RIGALI, ESQ.
LEO J. WISE, ESQ.
DEREK E. HINES, ESQ.
SEAN MULRYNE, ESQ.
Office of Special Counsel
United States Department of
Justice
950 Pennsylvania Avenue,
Northwest
Room B-200
Washington, DC 20530
(202) 616-2652
(771) 217-6091
(771) 217-6091
(202) 430-4880

10 For the Defendant:

DAVID Z. CHESNOFF, ESQ.
RICHARD A. SCHONFELD, ESQ.
Chesnoff and Schonfeld
520 South Fourth Street
Las Vegas, Nevada 89101
(702) 384-5563

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1 Los Angeles, California; Monday, November 25, 2024 10:07 AM

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3 (Call to Order)

4 THE CLERK: Calling item one, CR 24-91, United
5 States of America versus Alexander Smirnov.

6 Counsel, may I have your appearances, please.

7 MR. WISE: Good morning, your Honor. Leo wise,
8 Derek Hines, Christopher Rigali, and Sean Mulryne for the
9 United States.

10 THE COURT: Good morning, gentlemen.

11 MR. WISE: Good morning.

12 MR. CHESNOFF: May it please the Court. Your
13 Honor, David Chesnoff and Richard Schonfeld on behalf of Mr.
14 Smirnov, who's present in custody.

15 THE COURT: Gentlemen, good morning.

16 MR. SMIRNOV: Good morning.

17 MR. SCHONFELD: Good morning.

18 THE COURT: All right. We've got a number of
19 things on this morning's calendar, a motion -- some motions
20 in limine. And then I understand that we brought -- well,
21 where are we now?

22 Yes, sir.

23 MR. WISE: Your Honor, there are five Government
24 motions in limine. I believe there are four Defense motions
25 in limine. There is also -- the -- there is also 159, which

1 is the Defense's second ex parte motion to continue.
2 There's 162, which is the Defendant's motion to dismiss for
3 discovery violations. And then we've also submitted voir
4 dire questions. Each side has submitted voir dire
5 questions. We submitted a number of joint submissions of
6 trial documents. The only outstanding matter where there, I
7 believe, is an agreement is over the voir dire and the jury
8 instructions. So, by my count, there's about six items, the
9 Government's motions in limine, the Defense motions in
10 limine, their second motion to continue, their motion to
11 dismiss. And the motion to dismiss is set, I think, for
12 hearing next Monday, but --

13 THE COURT: Yes.

14 MR. WISE: -- we would -- I just mention it as an
15 open item. And then the voir dire and the jury
16 instructions.

17 THE COURT: And where did you say we are on the
18 jury instructions?

19 MR. WISE: There's just a few jury instructions
20 where the parties are in disagreement.

21 THE COURT: Okay.

22 MR. WISE: We submitted a joint set that's nearly
23 everything. There's one instruction of ours where we
24 included commentary from the instruction, which we think
25 applies to the specific facts in this case. They object to

1 that. They then have submitted three instructions. One is
2 for expert witness, which we've moved to exclude their
3 expert witness. One for telling the jury about witnesses
4 that have immunity or plea agreement. There are no
5 witnesses like that, so we think it's -- it doesn't apply.
6 And then one or two others that the motions in limine,
7 depending on what your Honor decides, will determine whether
8 they're appropriate.

9 THE COURT: Sure. What about this commentary? Is
10 this commentary that's actually in the published version of
11 the -- okay.

12 MR. WISE: It is, your Honor, yeah.

13 THE COURT: All right. Still, we have to tread
14 lightly. All right.

15 MR. WISE: Understood.

16 THE COURT: Anything else I need to know about?

17 MR. WISE: I think that's -- I think that's all
18 the open items as of right now, your Honor.

19 THE COURT: Okay.

20 MR. CHESNOFF: Your Honor, the motion that's
21 scheduled for next Monday, we didn't prepare to argue today.
22 We prepared to argue it next Monday, so --

23 THE COURT: Okay.

24 MR. CHESNOFF: Thank you. Your Honor, I brought
25 to the Court's attention, and I informed the Government that

1 I was bringing it to your attention, Mr. Smirnov has been
2 indicted by the Special Counsel in a companion case, I guess
3 I would call it, in another court. I want to tie that into
4 our request for a continuance. We have been preparing for
5 Mr. Smirnov to testify. In light of the fact that the
6 Government has been investigating Mr. Smirnov now since last
7 year and in light of the fact that they decided at 4:50, I
8 think it was, Friday to inform us of these new charges, we
9 have -- really need to emphasize to the Court that now we
10 have to evaluate and reevaluate the presentation of this
11 case on Mr. Smirnov's behalf because we have to now think
12 about whether or not to advise Mr. Smirnov to testify and,
13 more importantly, to help prepare him in light of the
14 allegations in this new indictment. We find it pretty --

15 THE COURT: Don't. No, I don't need that yet.

16 MR. CHESNOFF: Okay. Well, I just want to --

17 THE COURT: I just need to know, from a practical
18 standpoint --

19 MR. CHESNOFF: Yes.

20 THE COURT: -- are these -- these cases are -- I'm
21 assuming they're not related.

22 MR. WISE: So, your Honor, we did file a related
23 case notice --

24 THE COURT: Okay.

25 MR. WISE: -- but the case was not assigned to

1 your Honor.

2 THE COURT: Okay.

3 MR. WISE: And so it is separately assigned to
4 Judge Vera, and it hasn't hit the CM/ECF yet. We, as a
5 courtesy, provided a docketed copy --

6 THE COURT: Okay.

7 MR. WISE: -- to Defense counsel on Friday, the
8 same day we received it. We were told by the clerk's office
9 that it can take between 48 and 72 hours for it to hit
10 CM/ECF, but we did want to inform them that it had happened,
11 and that's why we did it on Friday.

12 MR. CHESNOFF: But I would like to point out to
13 your Honor, in opposing our request for a continuance, which
14 was based on the fact that we got the late delivery of
15 literally thousands of pages of information, which, I must
16 say, as attorney of record, Mr. Schonfeld and I have
17 dutifully tried to review everything from start to finish,
18 which is an impossible task considering our trial date is
19 next Tuesday. But the most important thing I want to tell
20 your Honor, opposing our motion for a continuance, the
21 Special Prosecutor informed you that this was their last
22 case as Special Prosecutor. And then on the eve of trial,
23 they've added another case, which obviously will go into the
24 2025 year. And so therefore, when they told you it was
25 their last case, I really don't understand how they did

1 that. It certainly misled me. And I hope the Court would
2 understand that in light of the fact that they have now
3 added charges that deal with his finances, that we have to
4 evaluate the impact that that has on our presentation of the
5 defense.

6 And we haven't seen the discovery from the new
7 indictment. It has never been given to us. We don't even
8 have counsel in place on the new indictment to work with us,
9 although we have spoken to tax litigators here in the
10 district.

11 So my request, your Honor, is that we continue the
12 trial date, so that all of us can get on the same page.

13 And I think I heard the prosecutor say they tried
14 to make it a related case. Well, if it's a related case,
15 why did they hide it from us until the eve of the trial,
16 your Honor, both of us? It's perplexing and disappointing.

17 So I would ask you to continue the trial, your
18 Honor, based on our motion, our second motion to continue,
19 the discovery that they dumped on us late, and now charging
20 him on the eve of trial.

21 THE COURT: I saw some of the scorched earth
22 discovery you propounded, and I know when I was reading, I'm
23 thinking, "It's going to take the Government forever to come
24 up with documents that are responsive to this discovery
25 request." But, apparently, they did it, and you don't like

1 the fact that they've backed up a truck and dumped all this
2 stuff on you, and that's fine. That doesn't impress me.

3 MR. CHESNOFF: We don't like that -- we don't like
4 that it was late beyond your order, your Honor.

5 THE COURT: Well, I can imagine that it was late,
6 given what you had asked for.

7 MR. CHESNOFF: Well, they should have already
8 known to give it to us, your Honor.

9 MR. WISE: Your Honor --

10 THE COURT: Listen, none of this matters, because
11 it's all now been trumped -- oh, Jesus, I didn't say that.
12 The real problem that we have is a new indictment. I don't
13 know the extent to which that case is related at all to this
14 case or will affect this case or will impact the decision of
15 whether or not the Defendant will testify in this case. I
16 don't know. But we damn well need to get it figured out
17 pretty quickly because, at last, I'm finally hearing a
18 reason to seriously entertain a continuance, and I don't
19 want to do that, and I'm not going to go into that on the
20 record, but -- this is now concerning. None of the other
21 stuff concerns me a bit. That's just simply, "No, no, yes,
22 I'll take it under submission." This is concerning.

23 MR. WISE: Your Honor, if I may?

24 THE COURT: Yeah, please.

25 MR. WISE: So it's a separately charged case.

1 THE COURT: Okay.

2 MR. WISE: The tax allegations could -- he could
3 be crossed on those whether or not it's charged. The case
4 law is clear, if he takes the stand and he's cheated on his
5 taxes, whether he's been indicted or not, that's fair game.
6 And so we were prepared to do that whether or not charges
7 were filed.

8 THE COURT: Okay.

9 MR. WISE: Nobody hid charges. I don't know what
10 Mr. -- is talking about. The grand jury returned the
11 indictment on Thursday. We got the filed copy on Friday,
12 and we sent it to them on Friday.

13 THE COURT: Okay.

14 MR. WISE: There has been a separate tax
15 investigation. He received more than \$2 million in income,
16 didn't pay any taxes on it. It's not related to lying to
17 the FBI in June of 2020. And so --

18 THE COURT: Oh, okay.

19 MR. WISE: Yeah.

20 THE COURT: Got you.

21 MR. CHESNOFF: Except -- the response to that,
22 your Honor --

23 THE COURT: Yeah.

24 MR. CHESNOFF: -- is, he just told you he intends
25 to cross examine him about it, so --

1 MR. WISE: I always did.

2 MR. CHESNOFF: First of all, nobody informed him
3 he was a target of a new investigation.

4 MR. WISE: We don't have to.

5 MR. CHESNOFF: Okay. Well -- but, your Honor,
6 they may not have to, but if you're going to have a trial
7 next Tuesday, you don't ambush the Court and ambush the
8 Defendant and not tell him, whether or not they're required
9 to by procedure or regulation.

10 What they've done here, your Honor, is put us in a
11 position where we don't know what the allegations are, we
12 don't know the discovery. He says that he made \$2 million
13 that he didn't report. That's him -- he couldn't cross
14 examine him about that without us being able to present a
15 defense to that. And until the tax person analyzes this,
16 your Honor, and provides us with that information and we see
17 the discovery, we can't prepare him to answer his questions.

18 So what -- not only does he want to blindsides us
19 by not letting us put the defense on, which is the subject
20 of our motions coming up, now he wants to handcuff us from
21 putting our client on the stand by deliberately failing to
22 disclose that he was under investigation and fit -- and
23 provide us with no discovery that he just told you he was
24 going to question him about. How can he question him
25 without giving us the discovery, your Honor?

1 MR. WISE: Are they going to tell us what they're
2 going to cross examine our witnesses on? We haven't gotten
3 any discovery from them.

4 THE COURT: It's not -- that is --

5 MR. CHESNOFF: I can't -- I cannot advise my
6 client effectively on what his Fifth Amendment rights are at
7 this late date, just getting an indictment Friday afternoon
8 at 4:50.

9 THE COURT: Well --

10 MR. CHESNOFF: It's impossible.

11 THE COURT: Okay. The income tax issue, if indeed
12 there has been -- if the IRS has identified a potential
13 problem there, that's always going to be in play, and --
14 generally, the taxpayer knows about it. It's not a secret
15 from the taxpayer. So I understand what you're saying --

16 MR. CHESNOFF: But it's now charged, your Honor.

17 THE COURT: Pardon?

18 MR. WISE: We're not going to get into the fact
19 that he's been charged, but he --

20 THE COURT: Okay.

21 MR. WISE: -- he's always been -- we could always
22 cross examine him on the fact that he's lied on his taxes.
23 He's lied on other government forms. Those are fair game,
24 too. And we don't have to give them discovery on what we're
25 going to cross examine their client on anymore they have to

1 give us discovery on what they're going to cross examine our
2 witnesses on.

3 MR. CHESNOFF: So after all the deadlines are
4 over --

5 THE COURT: This is a whole new case that's been
6 filed.

7 MR. CHESNOFF: Right. And they're going to
8 announce to you, your Honor, that they're going to be able
9 to ask those questions under some 404(b) theory without
10 giving us notice of 404(b)?

11 MR. WISE: It's not 404(b).

12 THE COURT: It's not 404(b).

13 MR. CHESNOFF: It is 404(b).

14 THE COURT: But anyway, I'm a little upset that we
15 spent some quality time together this morning, and then I
16 ask a few moments ago, "Is there anything else we need to
17 talk about?" and none of this --

18 MR. CHESNOFF: But this is the public part of the
19 case, your Honor. I didn't think it was appropriate to
20 discuss it in a non-public setting.

21 THE COURT: Oh, back in the -- during our first
22 hearing? That's right, not then.

23 MR. CHESNOFF: That's why I didn't discuss it.

24 THE COURT: That's fine.

25 MR. CHESNOFF: Thank you.

1 THE COURT: But soon thereafter as possible, I
2 kind of would like to have known about this because it moots
3 -- potentially moots a whole lot of other things.

4 MR. CHESNOFF: Well, I don't know why they didn't
5 tell you about it, your Honor. I did.

6 MR. WISE: Your Honor, when we saw that it was
7 assigned to a different judge, we intended to raise it in
8 the hearing, but it obvious -- it wasn't something -- if it
9 had been assigned to your Honor, your Honor would have known
10 about it, and we don't want to step on the Court's toes
11 about how cases are assigned and who makes that decision, so
12 we tend to tread pretty lightly on matters that are not in
13 front of the Court that they're assigned to.

14 THE COURT: Now, here's the deal. I don't know
15 whether or not your office has already completed the form
16 that ask you whether or not the new case is related to an
17 existing case or not, but I know the Court takes your
18 assessment of whether or not a case is related to another
19 case, they take that seriously. And I disagreed with the US
20 Attorney's Office's assessment on these things a number of
21 times, but you guys always win. So if, in your opinion, you
22 think that the cases are related --

23 MR. WISE: So we submitted the related case form
24 because it's the same Defendant --

25 THE COURT: Yeah, but Jesus --

1 MR. WISE: -- not because the charges are related.

2 THE COURT: That's about -- sometimes that's all
3 it takes, which is ridiculous.

4 MR. WISE: And it apparently -- I don't know who
5 the decision maker is, but, again, we did submit that with
6 the indictment, and the assignment was not to your Honor.

7 THE COURT: Right. So -- it's been assigned to
8 one of the other judges and -- who will look at the form and
9 see where the prosecution has indicated that the case is
10 related to this one, 24-91, and that'll be the end of that.
11 It'll get shipped my way.

12 MR. CHESNOFF: No, your Honor, they have to file a
13 motion, most respectfully, at this point. That's my
14 understanding of the law.

15 THE COURT: Who has to file a motion at this --

16 MR. CHESNOFF: The Government. If they want to
17 consolidate the cases --

18 THE COURT: No. No, no, no, no, no, no, it's not
19 being consolidated. This is court action. The Court is
20 going to receive this thing, and it's going to be indicated
21 on this form by the Government that the case is related at
22 24-99 -- 91, and they're going to shift that sucker down to
23 me.

24 MR. CHESNOFF: But the clerk already didn't.
25 That's why I'm saying they need to file a motion.

1 THE COURT: I don't think --

2 MR. CHESNOFF: And we're objecting to it as well.

3 THE COURT: So will I. So will I. All right.

4 MR. CHESNOFF: We really need a continuance here,
5 your Honor. I cannot advise my client about his Fifth
6 Amendment rights without having an opportunity to have a tax
7 lawyer spend the time with him and me and the discovery in
8 that case to determine whether or not he should testify.
9 And they could have told you this 30 days ago or 60 days
10 ago. They did it on a Friday before we come here for the
11 motions, giving you and the Defendant no time to respond to
12 it. It's --

13 THE COURT: The easy answer to this is just
14 simply, you're not to go into it in this case, not to go
15 into taxes, whether or not he's delinquent in his taxes,
16 whether or not he's been notified and things, his taxes are
17 going to be audited -- whatever relates to taxes, that's off
18 limits.

19 MR. CHESNOFF: And we would also ask the Court to
20 rule that if he does testify, he doesn't waive his rights to
21 the Fifth Amendment in the companion case.

22 THE COURT: One thing at a time. One thing at a
23 time. All right. Let me yell at the Government outside.

24 MR. CHESNOFF: With us, too, your Honor?

25 (Proceedings recessed briefly.)

1 MR. CHESNOFF: 13th, your Honor, on the 14th. And
2 I'm asking you, your Honor, this -- we did not cause this.

3 THE COURT: Okay. Grand jury caused it, and your
4 client contributed to that, but you were ready to go next
5 week, so I'm giving you an extra month, and you're not going
6 to be ready? I'm not buying that. So --

7 MR. CHESNOFF: We're not going to be here --

8 THE COURT: That's when we're going to go.

9 MR. CHESNOFF: We won't --

10 THE COURT: You'll be here or you won't.

11 MR. CHESNOFF: Okay. But, your Honor, the
12 pre-trial conference would be the week before?

13 THE COURT: No, it's going to be today.

14 MR. CHESNOFF: same day.

15 THE COURT: Today.

16 MR. CHESNOFF: Yeah. I -- okay. So even though
17 we're going to get new stuff.

18 THE COURT: What new stuff are you talking about?

19 MR. CHESNOFF: The discovery and the new
20 indictment that they're going to have to give us --

21 THE COURT: I'm not worried about that discovery
22 because it's not relevant to this case.

23 MR. CHESNOFF: Well then they should -- then they
24 should have agreed not to cross examine him about it, your
25 Honor.

1 THE COURT: Well, I can't get involved in what the
2 Government does and doesn't do. You know that.

3 MR. CHESNOFF: May I ask you, your Honor? I'm
4 trying to do the best job I can for him.

5 THE COURT: And you have been. You have --

6 MR. CHESNOFF: I appreciate it. Regardless of
7 him, I'm asking you. It will be physically impossible for
8 me to start on the 7th, in light of where I'm going to be.
9 I'm asking you to extend it one week, your Honor, to the
10 14th. I've been in this courthouse for 43 years, your
11 Honor. I've never shown disrespect, but I'm asking you.

12 THE COURT: Wait a minute. Wait. Wait, wait,
13 wait. Wait. You don't get what you want, then there's
14 likely to be disrespect?

15 MR. CHESNOFF: No. I said --

16 THE COURT: You see that guy?

17 MR. CHESNOFF: I didn't say that, your Honor. You
18 misheard me.

19 THE COURT: Oh, okay. I'm sorry. I didn't
20 understand what that meant, why that was included.

21 MR. CHESNOFF: The only reason I said it, your
22 Honor, is, I've never been disrespectful to any judge in
23 this courthouse, including you, and I'm asking you --

24 THE COURT: I don't understand now, what -- you
25 get extra credit for that?

1 MR. CHESNOFF: No, your Honor. I'm just --

2 THE COURT: Why are you mentioning that?

3 MR. CHESNOFF: Because I've been an officer of
4 this court for many years, and I'm asking you for a
5 professional courtesy. That's why I mentioned it.

6 THE COURT: So the dates that you're going to be
7 out of the country are what?

8 MR. CHESNOFF: 26th through the 6th.

9 THE COURT: 26 of December through the 6th of
10 January.

11 MR. CHESNOFF: And Mr. Schonfeld is out from the
12 19th to January 3rd.

13 THE COURT: Yeah. Okay. Yeah, that's what we'll
14 do. And that is what day of the week?

15 All right. We will move it from Monday to
16 Wednesday, January 8th. Okay.

17 MR. CHESNOFF: Thank you, your Honor.

18 THE COURT: That's the date.

19 MR. SCHONFELD: Thank you.

20 THE COURT: We will get you the rulings on the
21 motions in limine today.

22 MR. CHESNOFF: Thank you, your Honor.

23 THE COURT: With respect to the discovery motions,
24 the motions to dismiss the indictment, because you got what
25 you asked for, but you got it a bit late -- it may have had

1 something to do with the scope of what you asked for. But
2 in any event, I'm not going to dismiss this indictment
3 because of that. But we will get you something in writing
4 on what we discussed this morning, basically in-camera, and
5 on the motions in limine.

6 Yes, sir.

7 MR. CHESNOFF: We have until tomorrow --

8 THE COURT: Yes, sir, you do.

9 MR. CHESNOFF: Thank you.

10 THE COURT: You do. Okay. Unless there's
11 something else urgent.

12 MR. WISE: I don't believe so from the United
13 States, your Honor. Thank you.

14 THE COURT: Okay.

15 MR. CHESNOFF: No. Thank you for your courtesies,
16 your Honor.

17 THE COURT: Don't worry about it. Goodbye.

18 THE CLERK: The court is in recess.

19 (Proceedings concluded.)
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1 I certify that the foregoing is a correct
2 transcript from the electronic sound recording of the
3 proceedings in the above-entitled matter.

4
5 /s/Chinago Okonta 11/29/2024
6 Transcriber Date

7 FEDERALLY CERTIFIED TRANSCRIPT AUTHENTICATED BY:

8
9 /s/L.L. Francisco
10 L.L. Francisco, President
11 Echo Reporting, Inc.
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